

Below is an Opinion of the Court.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
) No. 09-39216-rld7
BRADLEY WESTON TAGGART,)
) MEMORANDUM DECISION
Debtor.)

On December 9, 2011, I issued my original Memorandum Opinion ("Memorandum Opinion") stating my findings of fact and conclusions of law with respect to debtor Bradley Weston Taggart's ("Mr. Taggart") Amended Motion to Hold Stuart M. Brown, Terry W. Emmert, Keith Jehnke and Sherwood Park Business Center, LLC in Contempt for Violating Discharge Injunction under 11 U.S.C. § 524 ("Contempt Motion") and further stating my intent to deny the Contempt Motion. For reasons that are not clear, following the submission of two alternative forms of order denying the Contempt Motion on December 19, 2011, the order denying the Contempt Motion ("Denial Order") was not entered until January 23, 2012.

In the meantime, on January 18, 2012, Mr. Taggart filed a motion to reconsider ("Motion to Reconsider") the decision reflected in the Memorandum Opinion. Subsequently, on January 24, 2012, Mr. Taggart

1 filed a Notice of Appeal of the Denial Order to be heard by the district
2 court.

3 I retain jurisdiction to decide the Motion to Reconsider and to
4 allow Mr. Taggart's appeal to become effective upon entry of an order
5 deciding the Motion to Reconsider under Fed. R. Bank. P. 8002(b).¹ See,
6 e.g., Miller v. Marriott Int'l, Inc., 300 F.3d 1061, 1063-64 (9th Cir.
7 2002) ("[A] notice of appeal filed after the district court announces
8 judgment is not effective until the district court has disposed of all
9 [Civil] Rule 60(b) motions filed no later than ten (10) days after
10 judgment is entered."); Martin v. Viles, 2009 WL 3365894 at *1 (E.D. Cal.
11 Oct. 16, 2009) ("If the notice of appeal is instead filed after a motion
12 for new trial, the notice of appeal is held in abeyance while the
13 district court resolves the motion. Fed. R. App. P. 4(a)(4)(B)(i).").

14 DISCUSSION

15 A. Standards for Deciding a Motion for Reconsideration

16 The Motion for Reconsideration asks that I reconsider and
17 reverse the decision reflected in the Memorandum Opinion. The Motion for
18 Reconsideration is "analogous to a motion for new trial or to alter or
19 amend the judgment pursuant to [Civil Rule] 59 as incorporated by Rule
20 9023." United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204,
21 209 (9th Cir. BAP 2006).

22 The Ninth Circuit has held that "[t]here are three grounds for
23 granting new trials in court-tried actions under [Civil] Rule 59(a)(2):
24

25 ¹ Unless otherwise indicated, all chapter and section references are
26 to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references
are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 (1) manifest error of law; (2) manifest error of fact; and (3) newly
2 discovered evidence." Brown v. Wright, 588 F.2d 708, 710 (9th Cir.
3 1978). See also Clinton v. Deutsche Bank Nat'l Trust Co. (In re
4 Clinton), 449 B.R. 79, 83 (9th Cir. BAP 2011):

5 To succeed on her motion to alter or amend the
6 judgment, debtor must have: (1) presented newly
7 discovered evidence, (2) showed clear error, or (3)
8 showed an intervening change in controlling law.
9 Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH &
10 Co., 571 F.3d 873, 880 (9th Cir. 2009).

11 I have broad discretion in determining whether to reconsider my
12 own orders, and "a motion for reconsideration should not be granted in
13 the absence of highly unusual circumstances." Orange St. Partners v.
14 Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

15 B. Grounds for Reconsideration

16 The only legal authority cited by Mr. Taggart in the Motion for
17 Reconsideration is the Ninth Circuit's decision in Boeing North American,
18 Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018 (9th Cir. 2005), cited by
19 both parties in their memoranda supporting and opposing the Contempt
20 Motion prior to my issuance of the Memorandum Opinion. I reviewed Ybarra
21 and discussed it at length in the Memorandum Opinion. Nothing in the
22 Motion for Reconsideration tends to suggest that I applied legal
23 standards inconsistent with Ybarra. Accordingly, I conclude that the
24 Motion for Reconsideration does not establish clear error of law or any
25 change in controlling law.

26 The Motion for Reconsideration further does not present any new
evidence, other than statements regarding the entry of judgment in the
Circuit Court following my issuance of the Memorandum Opinion. Rather,

1 the Motion for Reconsideration argues in effect that I clearly erred in
2 my fact findings and conclusions that Mr. Taggart reengaged in the
3 Circuit Court Lawsuit and "reentered the fray," considering Ybarra. As I
4 hope I made clear in the Memorandum Opinion, I carefully considered the
5 factual record before me and did not come lightly to the conclusion that
6 Mr. Taggart could not prevail on the Contempt Motion. As I pointed out
7 in the Memorandum Opinion, the record before me was mixed, but after
8 analyzing the evidence in light of Ybarra, I concluded that Mr. Taggart
9 did not meet his burden of proof to prevail on the Contempt Motion.
10 Nothing contained in the Motion for Reconsideration convinces me that I
11 erred in that determination. If I did commit clear error in my decision
12 of the Contempt Motion, that error can be corrected in Mr. Taggart's
13 appeal.

14 CONCLUSION

15 For the foregoing reasons, I will deny the Motion for
16 Reconsideration. The court will prepare a consistent order to be entered
17 contemporaneously with this memorandum decision.

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19 cc: Damon J. Petticord
20 James Ray Streinz
21 John Berman
22 Tyler Smith
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